Intervention/Discussion

Abortion and Non-Fallacious Potentiality: A Reply to Berkich

TRAVIS DUMSDAY *University of Calgary*

In his "A Fallacy in Potentiality" Don Berkich (2007) provides a thorough and thought-provoking assessment of the so-called "Trajectory Argument" against abortion, presenting an objection that he believes is effective against every form of it seen thus far. After reviewing the argument itself and Berkich's objection, I provide a counter-objection arising from the ontology of dispositions, one which shows that the Trajectory Argument holds its own against Berkich's critique.

The basic idea of the Trajectory Argument is that because a conceptus[1] has the potential to develop into an adult human being, it is wrong to destroy the conceptus for any reason, unless that reason would also justify the destruction of an adult human being. The conceptus is the opening point of a causal trajectory that will, if left to develop normally, likely result in a person; this grants it a high moral status. The argument is designed to capture what some take to be a strong intuition that no one would want the conceptus that became him or her to have been destroyed, and so it is *prima facie* wrong to destroy other concepti. Thus it is presumed to speak against the general moral permissibility of abortion, and

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to do so independently of any ontological commitments concerning the personhood or non-personhood of the conceptus.

That is of course a rough sketch of the argument, and among the many admirable traits of Berkich's paper is a clear and detailed summary of the reasoning here, one which is worth reproducing:

(1) For any actions A and B, if A and B would have the same effect and A is morally wrong because of its effect, then B would have been morally wrong.

(2) For any person X, destroying the conceptus that initiated X's trajectory has the same effect of bringing about X's non-existence as killing X at t.

(3) For any person X, it is morally wrong to kill X at t without sufficient reason.

∴ (4) For any person X, it would have been morally wrong to destroy the conceptus that initiated X's trajectory without sufficient reason.

∴ (5) For any person X, if it is morally wrong to kill X at t without sufficient reason, then it would have been morally wrong to destroy the conceptus that initiated X's trajectory without sufficient reason. (Berkich 2007, p. 140)

Berkich takes this to be but the first step of the argument, since there is more to be said. What has been shown up to this point is that, with respect to any person whom it is presently wrong to kill, it would have been wrong to kill the conceptus that became the person in question. But additional argument is required to draw the further conclusion that it is wrong to destroy *any* conceptus without sufficient reason. He then lays out the further reasoning required here (Berkich 2007, pp. 140-41):

(6) For any person X and some time t, it is morally wrong to kill X at t without sufficient reason.

∴ (7) For any person X, it would have been morally wrong to destroy the conceptus that initiated X's trajectory without sufficient reason.

(8) If, for any person X, it would have been morally wrong to destroy the conceptus that initiated X's trajectory without sufficient reason, then it is morally wrong to destroy any conceptus without sufficient reason.

∴ (9) It is morally wrong to destroy any conceptus without sufficient reason.

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The ultimate conclusion therefore is that for any conceptus the justifications given for killing it must be as strong as the justifications given for killing an adult. The key premise in this second stage of the argument is (8), and it is the truth of this premise that Berkich targets.

He begins by noting that this premise has been argued for differently by various authors, among them Hare (1975), Marquis (1989), Pruss (2002), and Stone (1987). I commend to the reader Berkich's helpful discussion of these authors' treatments of this point, but for reasons of space I will here present only Berkich's summary of Stone's reasoning, which I hope will serve adequately as representative:

(8.1) For any person X, it would have been morally wrong to destroy the conceptus that initiated X's trajectory without sufficient reason.

∴(8.2) It would have been morally wrong to destroy the conceptus that initiated J's trajectory without sufficient reason.

(8.3) If it would have been morally wrong to destroy the conceptus that initiated J's trajectory without sufficient reason, then J has the capacity to realize conscious goods.

(8.4) If J has the capacity to realize conscious goods, then any conceptus has the capacity to realize conscious goods under normal development.

(8.5) If any conceptus has the capacity to realize conscious goods under normal development, then it is morally wrong to destroy any conceptus without sufficient reason.

∴(8.6) It is morally wrong to destroy any conceptus without sufficient reason.

∴(8) If, for any person X, it would have been morally wrong to destroy the conceptus that initiated X's trajectory without sufficient reason, then it is morally wrong to destroy any conceptus without sufficient reason. (Berkich 2007, p. 143)

Berkich maintains that in this argument on behalf of premise (8) Stone makes an unjustified leap, as do each of the other authors in question. One cannot jump from the claim that it would have been wrong to destroy the conceptus that actually became an adult, to the claim that it is wrong to kill some conceptus right now:

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> The reason why it would be morally wrong to destroy the conceptus that became me—namely, to bring about the non-existence of an actual person, me—does not extend to the act of destroying some arbitrary conceptus now is that there is no *actual* person one could intend to, or even would, eliminate by destroying the conceptus. (Ibid., p. 148)

In support of this criticism Berkich presents two scenarios: in one scenario an assassin has been hired to kill him, but is squeamish about using violence. So the assassin travels back in time and convinces Berkich's mother not to marry his father, thus causing it to be the case that Berkich is never conceived. Berkich grants that this would be morally equivalent to killing him by more conventional means. However, he then imagines that before he was born a meddling friend convinces his mother not to marry his father, causing it to be the case that he is never conceived. This case is crucially different, because here there is no intention to eliminate the trajectory that becomes some actual person, namely, Berkich. "The effect of the meddling friend's meddling is not to obliterate an already existing trajectory, or even to bring about my non-existence. Rather, the effect of her meddling is to ensure that none of an indefinite number of merely *possible* trajectories become actual" (ibid., p. 147). So, although the Trajectory Argument can be applied retrospectively with respect to adults now living, it cannot be extended to any conceptus that has not yet developed into an adult.

Applying this point more specifically to Stone's defence of the key premise (8), Berkich argues that Stone's (8.5)—"If any conceptus has the capacity to realize conscious goods under normal development, then it is morally wrong to destroy any conceptus without sufficient reason"—cannot be correct, since "only those conceptuses with trajectories anchored by actual persons have the capacity to realize conscious goods, which is just what the 'under normal development' clause presupposes. A merely possible conceptus, or an actual conceptus whose trajectory terminates before being anchored by an actual person, has no such capacity" (ibid., p. 148).

I hope Berkich's reasoning is now sufficiently clear to undertake a brief evaluation. I would like to focus on the line just quoted, where Berkich claims that a merely possible conceptus, or an actual one that dies before developing into a full person, has no capacity to realize conscious goods. I readily grant that this holds of a merely possible conceptus, i.e., a non-existent conceptus. Berkich is quite correct in holding that nothing immoral is taking place in the meddling friend scenario—at least nothing relevant to the debate over the morality of destroying concepti. There is simply nothing there to destroy. The problem arises rather in his claim that an existent conceptus whose trajectory is cut off before developing into a person lacks *any capacity* to realize conscious goods (i.e., to lead a

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conscious life incorporating some positive experiences). I believe Berkich could have fleshed out his argument here a bit more precisely, but the idea seems to be this: if something has an intrinsic nature such that if allowed to "develop normally" it will manifest certain capacities, but as a matter of contingent fact never so develops, then it never really had the capacities in question. This seems to me a questionable point. Among those who accept a realist ontology of dispositions, it is usually taken for granted that a disposition which is never manifested is still a real disposition. Sugar that was never actually dissolved in water before being destroyed was still soluble while it existed. It still had the capacity to dissolve, even though that capacity went unrealized. The same point holds of dispositions manifested mediately, after some process of alteration/development on the part of the object in question.[2] A lump of sugar that is never refined and then dissolved in water always had the disposition to be dissolved-after-having-been-refined. That mediate manifestation still rests on underlying potentialities possessed by the sugar from the very beginning.

To take an example from the animal realm, a clever cat has the capacity to be trained to do basic tricks and advanced tricks. The fact that the advanced tricks must be taught after the basic tricks does not mean that the cat, before learning any tricks at all, has *no capacity whatever* to learn the advanced ones. Indeed, the cat's ability to do the more advanced tricks is ultimately dependent on its underlying intelligence, its underlying capacity to learn, which is present right from the beginning of the learning process. Manifestations of some underlying dispositions may only occur after a process of development, but the underlying dispositions must be present throughout. If the cat is prematurely killed before it actually learns the advanced tricks, that does not change the fact that while alive the cat had the underlying capacity required to learn them.

Closer to home, a colleague of mine competes in Ironman triathlons. I do not. Do I have the capacity to compete in them? In one sense no. I do not have the immediate capacity to compete in an Ironman competition right now, and it is best not to think about what would happen if I tried (humiliation at the very least). But I do have the *ultimate* capacity to compete in them. If I asked her for all of her training tips and set about a rigorous course of running, biking, and swimming for nine months, gradually building myself up, then I believe I could enter such a competition with realistic hopes of not humiliating myself. But here is the crucial point: I currently have *that* potentiality, the potentiality of eventually competing in the Ironman. And so I have the capacity to compete in the Ironman, but I have it mediately in that I could only manifest it after an intervening causal process of training. Still, that mediate capacity is ultimately dependent on a presently existing underlying capacity.

This is rather a significant fact about dispositions more generally, since most of the capacities we think about on a day-to-day basis are of this

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mediate kind. I have the potential to eat some of the caramel cake currently in my fridge (thereby further diminishing my Ironman hopes), but that capacity is an underlying one and dependent for its manifestation on certain others: my ability to move from here to the fridge, to open the door, etc. But it would be absurd to say that before taking these intermediate steps I *completely* lack the capacity to eat the cake. The fact that the manifestation of this underlying capacity is dependent on an intermediate process or processes does not remove the capacity; far from it, my undertaking these intermediate steps is in part explained by the underlying capacity. Indeed, most of the events in which we find ourselves causally implicated are dynamic processes involving ordered stages. As a general point, it is manifestly incorrect to say that the capacity to reach the end stage of some process is wholly lacking in someone or something simply because that person or thing is currently involved in an opening or intermediate stage of that process.

The same could be said of the existent conceptus's capacity to realize conscious goods. Obviously it cannot presently manifest its ultimate capacity to realize these goods, but the fact that some concepti do go on to realize them proves that by nature they all have the relevant underlying capacity to do so. As with many if not most other capacities, that capacity can only be manifested after a process of further development, but this does not obviate the fact that the underlying capacity was present from the beginning. It might take me nine months of training to manifest my inherent capacity to compete in the Ironman, but the capacity was there all along or else the end point could never have been reached. And it might take a conceptus nine months of standard biological development to manifest its inherent capacity for the realization of conscious goods, but, once again, the underlying capacity had to have been there all along. And if Stone is correct in thinking that the capacity on the part of the conceptus for the realization of conscious goods is morally relevant, then Stone's justification of premise (8) seems to hold.

One reply that might be made on behalf of Berkich's account is that the conceptus does not by itself provide an adequate anchor for the morally relevant dispositions, independently of subsequent development into an adult; the reason is that it is not clear whether the conceptus is the same kind of thing as a person, the end result of the process of development. Thus my Ironman example, where it is clear that before and after training I belong to the very same natural kind, may not be relevant to the case at hand. Unless one can show that the conceptus and the subsequent adult ultimately belong to the same natural kind, it will remain unclear whether the conceptus really does have the capacity to realize conscious goods. This is especially so in the case of a severely damaged conceptus.[3]

However, the point of the Trajectory Argument is to develop a case against the general moral permissibility of abortion, one which does not

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rely on the idea that the conceptus belongs to the *a priori* normatively significant kind "person." It may well not belong to that kind. Rather, all that is needed is the fact that concepti produced by members of a certain biological species have a certain inherent ultimate capacity. That they do is empirically verified by the fact that the adult members of the species manifest the capacity.

Now, in the case of a severely mutated or otherwise damaged conceptus, there may be uncertainty as to whether it still possesses the relevant underlying capacity. In a case like this, being anchored by a realized trajectory might be epistemically relevant; i.e., independently of later development, we might be uncertain as to whether the damaged conceptus possesses the morally relevant capacity. But that epistemic point is compatible with the soundness of the Trajectory Argument, given that its concern is with "any conceptus [that] has the capacity to realize conscious goods *under normal development*" (Berkich 2007, p. 148). The latter phrase indicates that the argument is not intended to encompass severely damaged concepti (though it does *not* imply further that only those concepti anchored by subsequent adult development are included). However, one could certainly extend the argument and make the further point that in the case of a damaged conceptus, the proper course would be to err on the side of caution by assuming that the morally relevant capacity remains, and refrain from destroying it for fear of killing a morally significant entity.

Thus, while there might be other problems with the Trajectory Argument, the difficulty Berkich raises does not counter it.[4]

Notes

1 Berkich's term, taken from Noonan (1970), referring to the developing life that exists between conception and birth.
2 The notions of immediate versus mediate dispositions used here correspond to Broad's (1949) distinction between first- and second-order dispositions.
3 My thanks to anonymous referees for *Dialogue* for raising these issues.
4 My thanks to Allen Habib and two anonymous referees for their helpful suggestions.

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